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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/710,689	07/28/2004	Joel Fried	2361-3	4688
26496 7590 01/27/2010 GREENBERG & LIEBERMAN, LLC 2141 WISCONSIN AVE, N.W. SUITE C-2 WASHINGTON, DC 20007				
EXAMINER SILBERMANN, JOANNE				
ART UNIT 3611		PAPER NUMBER		
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/710,689

**Applicant(s)**

FRIED ET AL.

**Examiner**

Joanne Silbermann

**Art Unit**

3611

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 October 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 38-47 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 38-42 and 45-47 is/are rejected.
- 7) ☒ Claim(s) 43 and 44 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the:
  2. stand configured to house extended legs;
  3. a housing having a magnetic bottom piece used with a stand configured to house extended legs;
  4. the plurality of switches;
  5. a pulse generating means;
  6. a sensor discriminator means;
  7. a long life battery; and
  8. an audible signaling means
9. must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering

of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Objections***

10. Claims 43 and 44 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim must refer to the other claims in the alternative only. See MPEP § 608.01(n). Accordingly, the claims have not been further treated on the merits.

***Claim Rejections - 35 USC § 112***

11. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

12. Claims 38-47 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

13. In claims 38, 40, and 45, several light sources are claimed. It is not clear which light source is used in the invention or how all these light sources are used together.

14. In claim 38 line 12 "the power source" does not have antecedent basis.

15. In claims 40, 41, 42, and 45, line 2 of each "claims" should be "claim."

16. In claim 41 line 2 "the said magnetic holder of the mounting means" lacks antecedent basis.

17. Claim 47 depends from claim 1 which was canceled by amendment on 9/22/05.

It is not clear from which claim it should now depend. Correction is required.

18. The remaining claims are rejected as depending from rejected claims.

***Claim Rejections - 35 USC § 103***

19. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

20. Claims 38-42 and 45, as best as can be understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Payan et al. US publication 2004/0128888 A1 (Payan).

21. Payan teaches a portable auxiliary vehicle warning device capable of being installed by a user by reaching out of a window comprising housing 37 (Figure 3), visual display means (LEDs) 50-52 on the housing for providing at least one message, and stand 32 for securing the housing to the vehicle. The housing can be mounted on any desired portion of the vehicle [0038].

22. The housing includes several sections that may be folded [0038] and at least three sections are shown.

23. The display may be powered by the electrical system of the vehicle [0039]. A microprocessor may be used to selectively activate certain components to create a desired message [0039].

24. Legs 44, 45 may be collapsed and stored in stand 32 [0038].

25. Regarding claim 39, the housing is capable of being stored in the glove compartment of the vehicle.
26. Regarding claim 40, the messages include a plurality of small lights 50 (Figure 3).
27. Regarding claim 41, as best as the claim can be understood, Payan teaches magnets 18 which may be used to attach the device to the vehicle.
28. Regarding claim 42, Payan teaches using a battery to power the device [0034].
29. Regarding claim 45, the lights may be an LED array [0050].
30. Claim 46 is rejected under 35 U.S.C. 103(a) as being unpatentable over Payan as applied to claim 38 above, and further in view of Williams, US patent #5,097,612 (Williams).
31. Payan does not specifically teach arrows on the sign, however this is well known in the art as shown by Williams. Williams teaches an emergency sign with multiple messages including arrows (Figures 9 and 10). It would have been obvious to one of ordinary skill in the art to utilize arrows on the sign of Payan since this symbol is well recognized and useful when directing traffic around an accident or emergency site.
32. Claim 47 is rejected under 35 U.S.C. 103(a) as being unpatentable over Payan as applied to claim 38 above, and further in view of Fahs, US patent #5,132,666 (Fahs).
33. Payan does not teach an audible signaling means connected to the circuit, however such audible means are well known in the art as shown by Fahs. Fahs teaches a display device including an audible signal means (column 3 lines 8-13). It would have been obvious to a person having ordinary skill in the art to utilize such an

audible signal means on the device of Payan to make the device more noticeable and provide further warning.

***Response to Arguments***

34. Applicant's arguments filed 10/5/09 have been fully considered but they are not persuasive.

35. It is noted that Applicant has re-submitted claims present in the original application. These claims included numerous drawing objections. The drawing objections have thus been repeated herein.

36. It is also noted that new independent claim 38 appears to claim elements from both embodiments of Applicants' invention. It is not clear how the device includes a magnetic holder of the mounting means as well as a stand configured to house extended legs.

37. A new rejection has been made in response to new claim 38.

***Conclusion***

38. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joanne Silbermann whose telephone number is 571-272-6653. The examiner can normally be reached on M-F 5:30 - 2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on 571-272-6651. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Joanne Silbermann  
Primary Examiner  
Art Unit 3611

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